



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

Date: May 23, 2003

ITEM 3 – Approval of Proposed Regulatory Language Clarifying Procedures for the Release of Financial Assurances by Lead Agencies

BACKGROUND: The Surface Mining and Reclamation Act of 1975 (SMARA, PRC §2710 et seq.) requires that prior to the commencement of surface mining operations, the operator shall obtain a financial assurance for the operations from the lead agency (PRC §2770). SMARA, also, requires that the lead agency approve the amount of the financial assurance as sufficient to reclaim the lands disturbed by the mining activities, as well as the adequacy of the financial assurance instrument itself. The amount of the instrument is determined in accordance with the provisions of PRC §2773.1 and 14CCR Article 11, specifically §3804.

Financial assurances are to be specific to each surface mining operation and based on the requirements of the approved reclamation plan for that surface mine. The financial assurance instrument shall remain in effect until surface disturbances created by the mining activities have been satisfactorily reclaimed by the operator in accordance with the reclamation plan. (PRC §2773.1[a][2], [c]).

Annually, the financial assurance for a surface mine must be adjusted, if needed. In order for the lead agency to determine if any change to the financial assurance amount is necessary, the operator is required annually to submit to the lead agency a written calculation of the financial assurance amount as provided for under 14CCR §3804. The lead agency is required to provide a copy of the financial assurance calculation to the Director of the Department of Conservation (DOC), along with all supporting information and documentation upon which the financial assurance calculation is based, as well as indicate to the DOC that the calculated financial assurance amount is adequate to complete reclamation according to the approved reclamation plan. The DOC is provided not less than 45 days to review and comment on the financial assurance calculation (PRC §2774 [d][1], 14CCR §3805).

Financial assurance instruments must be made payable to the lead agency, and to the Department of Conservation (PRC §2773.1[a][4]); thus, both the lead agency and the DOC are beneficiaries with equal standing. Also, both the lead agency and the DOC are

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enforcing agencies regarding the forfeiture of financial assurances under PRC §2773.1 (b) and (d).

DISCUSSION: **Release of Financial Assurance Upon Completion of Reclamation** – PRC §2773.1(c) provides that a financial assurance shall be released upon written notification to the DOC from the lead agency that reclamation has been completed in accordance with the approved reclamation plan. The completion of reclamation is the basis for a new financial assurance calculation; that is, no financial assurance amount is required because reclamation has been completed and there are no further outstanding costs for which the operator is liable.

Under PRC §2774 [d][1] and 14CCR §3805, the DOC is provided not less than 45 days to review the financial assurance calculation. This is necessary since the DOC is both a co-beneficiary of the financial assurance instrument, as well as a responsible enforcer for the reclamation of the site if the lead agency fails to take appropriate actions to ensure reclamation (PRC §2773.1[b] and [d]).

SMARA provides under §2774(b) that, not less than once in each calendar year, the lead agency shall conduct an inspection of each surface mine within its jurisdiction to determine if the mine is in compliance with SMARA. The inspection report must be provided to the DOC, it shall contain a statement regarding the surface mining operation's compliance with SMARA, and it shall specify which aspects of the surface mining operation are inconsistent with SMARA.

Therefore, prior to the release of the financial assurance instrument to the operator, the lead agency must provide to the DOC an inspection report stating that the mine site is in compliance with the requirements of SMARA and its reclamation plan, and a financial assurance calculation pursuant to 14CCR §3805 that shows no further reclamation cost liabilities. The DOC, under both PRC §2774 [d][1] and 14CCR §3805, is provided not less than 45 days to review the financial assurance calculation and supporting documents (including the inspection report).

The DOC may, as a responsible enforcing agency under SMARA, and during the 45 day review period, conduct its own inspection of the mine site pursuant to PRC §2774.1(a) to determine if the mine has been reclaimed in accordance with its reclamation plan requirements and conclude that there are no further outstanding reclamation liabilities to be included in the financial assurance.

If the DOC determines, upon an inspection pursuant to PRC §2774.1(a), that there are outstanding compliance issues, then it may notify the operator and the lead agency of its findings and indicate the specific deficiencies that need correcting. In this case, the lead agency could not release the financial assurance instrument since the mine site was not fully reclaimed in compliance with SMARA.

If the DOC determined that the site was in compliance with SMARA, and that there were no longer any outstanding liabilities for reclamation on the part of the operator, the DOC may notify the lead agency of its approval to release the financial assurance instrument. In order for this process to be made clear, the SMGB may wish to codify the process in regulation pursuant to its authority under PRC §2755 and §2756.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer recommends that the SMGB clarify and make specific in regulation the process by which a financial assurance instrument may be released to the operator pursuant to PRC §2773.1 upon the completion, in accordance with the requirements of an approved reclamation plan, of the reclamation of mined lands disturbed by surface mining operations. The Executive Officer recommends that the SMGB approve the proposed text and instruct the Executive Officer to commence the rulemaking process by circulating the text for the 45-day public comment period.

SUGGESTED MOTION LANGUAGE:

To approve the proposed regulatory language:

Mr. Chairman, in light of the information before the Board today, I move that the Board approve the proposed regulatory language adding Section 3805.5 to Title 14, California Code of Regulations as presented [or as modified], and instruct the Executive Officer to commence the rulemaking process.

PROPOSED TEXT FOR CONSIDERATION: The following text is proposed for consideration by the SMGB, to be added to Title 14, Article 11, creating §3805.5

§3805.5 Release of Financial Assurance

(a) The financial assurance required under Public Resources Code Section 2773.1 shall only be released by the lead agency to the operator upon written concurrence of the director that the completion of reclamation of the mined lands disturbed by surface mining operations is in accordance with the requirements of the lead agency approved reclamation plan.

(b) Prior to the release of the financial assurance, the lead agency shall provide to the director of the department the following documents at one time:

(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code Section 2774, stating that the mined lands have been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operations that are inconsistent with the meaning of

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reclamation as defined in Public Resources Code Section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with Section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code Section 2773.1, with supporting documentation, indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined lands have been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and recommending to the director that the financial assurance be released.

(c) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code Section 2774, and to conduct the director's own inspection of the surface mining operations if the director determines it necessary under Public Resources Code Section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that there are no outstanding reclamation liabilities on the mined lands and that the financial assurance should be released pursuant to Public Resources Code Section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operations that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975, and that the financial assurance shall not be released until the violation is corrected.

(d) If a violation of the surface mining operations is confirmed by an inspection either by the lead agency or by the director, then the lead agency, or the director, may take actions under Public Resources Code Section 2774.1 to ensure that the violation is corrected. In any event, the financial assurance shall not be released until the violation is corrected.

Note: Authority: Section 2755, Public Resources Code; References: Sections 2729, 2731, 2733, 2735 2773.1, 2774, and 2774.1, Public Resources Code.